United States Department of Labor
Employees' Compensation Appeals Board

P.G., Appellant	)	
and	)	**Docket No. 06-1861**
	)	**Issued: November 30, 2006**
DEPARTMENT OF VETERANS AFFAIRS, REGIONAL OFFICE, Waco, TX, Employer	)	

Appearances:
Minnie Gonzales, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 9, 2006 appellant filed a timely appeal from the July 17, 2006, decision of the Office of Workers' Compensation Programs, denying appellant's claim on the grounds that she failed to establish fact of injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(1), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty on May 1, 2006, as alleged.

FACTUAL HISTORY

On May 30, 2006 appellant, a 45-year-old veterans services representative, filed a traumatic injury claim, Form CA-1, alleging that she injured her back while moving and sorting files on May 1, 2006. At the time the claim form was filed, she did not know whether the injury was an aggravation of a prior back condition or was a new injury. Her supervisor, Nancy Haberl, controverted the claim. Additionally the employing establishment alleged that there were no

witnesses to the incident and that they were suspicious of appellant's claim because of its similarity to a claim she made for a back injury in 2003.[1]

On June 2, 2006 appellant underwent a magnetic resonance imaging (MRI) scan to determine the nature of her back injury. In a June 6, 2006 report, Dr. Patrick Cindrich, a Board-certified neurosurgeon, diagnosed appellant with an acute left-sided L3-4 disc protrusion, with moderate to severe stenosis and bilateral foraminal encroachment. He noted that appellant had undergone a lumbar fusion three years earlier. Dr. Cindrich also reported that appellant had been doing "quite well" until she was "lifting at work recently" and experienced left-sided radicular pain.

On June 14, 2006 the Office requested that appellant provide additional information about her claim. In response, appellant provided medical reports from Drs. Henry J. Boehm, III and Jeffrey C. Gerick, both Board-certified diagnostic radiologists and a patient record form from Dr. Cindrich. She also provided email correspondence with her union representatives and supervisor from May 30 and 31, 2006 and photographs of her work area.

Dr. Boehm's report, dated June 2, 2006, was based on the MRI scan taken the same day. He noted the evidence of appellant's prior surgery on spinal bones L4, L5 and S1, and the existence of minimal disc bulge, mild lateral recess narrowing and left neural foraminal narrowing between these bones. Moving down the spine to L3 and L4, Dr. Boehm found moderate broad-based disc protrusion, moderate ligamentum flavum hypertrophy and degenerative facet change, which resulted in a diagnosis of moderate-to-severe spinal stenosis. He found the rest of the spine to be normal.

Dr. Gerik's unsigned report, dated September 1, 2005, contained an interpretation of the x-ray results of appellant's lumbar spine. The x-rays revealed advanced hypertrophic degenerative facet joint disease from L4 to S1 and mild changes of degenerative disc disease at L5-S1.

The email correspondence between appellant and her union representatives alleged that appellant notified her supervisor of her back injury on May 3, 2006 after returning to work following a day of sick leave. Appellant alleged that Ms. Haberl told her that no accident report would be necessary since appellant already had a bad back and "there would be nothing to report."

On July 17, 2006 the Office issued a decision denying appellant's claim on the grounds that the medical evidence did not establish a relationship between the accepted work incident and the medical condition.

[1] The Board notes that the facts and the circumstances surrounding the purported 2003 back injury and whether appellant filed a claim which was accepted by the Office are not contained in the case record.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury and an occupational disease.[4]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first analyze whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the incident caused a personal injury, and, generally, this can be established only by medical evidence.[5]

In establishing the causal relationship between the employment and the injury, the Office usually relies on a physician's opinion as to whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[6] This rationalized medical evidence must be based on a complete factual and medical background of the claimant,[7] and must be one of reasonable medical certainty,[8] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

ANALYSIS

There is no dispute that appellant was engaged in the employment activities of moving and sorting files on May 1, 2006 when she allegedly sustained a back injury. The issue to be resolved is whether the back injury resulted from the employment incident of May 1, 2006.

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Tracy P. Spillane*, 54 ECAB 608.(2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Ellen L. Noble*, 55 ECAB 530 (2004).

[6] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[8] *John W. Montoya*, 54 ECAB 306 (2003).

[9] *Judy C. Rogers*, 54 ECAB 693 (2003).

The Board finds that appellant has not provided any rationalized medical evidence to demonstrate that her alleged back injury is causally related to the May 1, 2006 employment incident. Beyond a cursory statement in Dr. Cindrich's June 6, 2006 medical report that appellant hurt herself while lifting at work, there is nothing to causally connect appellant's diagnosed injury with the accepted work incident. Because there is no mention of the history of the May 1, 2006 employment incident in Dr. Cindrich's report, there is no evidence that he was aware of or analyzed them and their relationship to appellant's alleged injury. Dr. Cindrich has not provided a rationalized medical opinion, based on an accurate factual and medical background as to the cause and nature of the alleged work-related injury. Appellant has thus not met her burden of proof with this report.

Dr. Boehm's June 2, 2006 report discussed the results of the MRI scan and includes a diagnosis of moderate-to-severe spinal stenosis. However, he did not address causal relationship with the May 1, 2006 employment incident.

Dr. Gerik's unsigned report is of diminished probative value as the author is not readily identifiable as a physician.[10]

CONCLUSION

The Board finds that appellant has not established that she sustained an injury to her back in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 17, 2006 is affirmed.

Issued: November 30, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[10] *See Merton J. Sills*, 39 ECAB 572 (1988).